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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/419,824 04/11/95 COCHRANE C TSRI-147.200

EXAMINER

18N2/0107

THE SCRIPPS RESEARCH INSTITUTE
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ART UNIT NO. PAPER NUMBER

6

1811

DATE MAILED: 01/07/97

This is a communication from the examiner in charge of your application.
 COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 0 month(s), 30 days from the date of this letter.
 Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☐ Notice of References Cited by Examiner, PTO-892.
2. ☒ Notice of Draftsman's Patent Drawing Review, PTO-948.
3. ☐ Notice of Art Cited by Applicant, PTO-1449.
4. ☐ Notice of Informal Patent Application, PTO-152.
5. ☐ Information on How to Effect Drawing Changes, PTO-1474.
6. ☐ _____

Part II SUMMARY OF ACTION

1. ☒ Claims 1-46 are pending in the application.
 Of the above, claims _____ are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☐ Claims _____ are rejected.
5. ☐ Claims _____ are objected to.
6. ☒ Claims 1-46 are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

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Part III DETAILED ACTION

Restriction Requirement

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-33, drawn to compounds and compositions, classified in classes 514 & 530 generally.
- II. Claims 34-46, drawn to methods of use, classified in classes 424 generally.

The inventions are distinct, each from the other because of the following reasons:

a. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product has broad utility beyond treating pulmonary distress symptoms and can be used as pharmaceutical vehicle for a variety of drugs beyond pulmonary targets.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Species Requirement

The claims are generic and/or individually dependently directed to a plurality of disclosed patentably distinct species comprising different sequences as well as phospholipid compounds. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for **both 1) the different sequences as well as 2) the phospholipid compounds**, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

A telephone call was made to Ms. April Logan on January 6, 1997 to request an oral election to the above restriction requirement, but did not result in an election being made.

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Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Future Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Patrick R. Delaney whose telephone number is (703) 308-4324.

Any inquiry of a general nature or relating to the status of this application should be directed to THE MATRIX CUSTOMER SERVICE CENTER whose telephone number is (703) 308-0196.



P.R. Delaney
January 6, 1997



CECILIA J. TSANG
SUPERVISORY PATENT EXAMINER
GROUP 1800